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IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

THE CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
Petitioner,
vs.
THE UNITED STATES OF AMERICA,
Respondent.
No. 552.

PETITION FOR WRIT OF CERTIORARI.

O. H. DEAN,
W. D. MCLEOD,
H. C. TIMMONDS,
Attorneys for Petitioner.

O. M. SPENCER,
Of Counsel.

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THE CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
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vs.

THE UNITED STATES OF AMERICA,
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No.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, The Chicago, Burlington & Quincy Railway Company (hereinafter sometimes referred to as the Burlington Company), respectfully petitions this Honorable Court to grant a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit, and to remove therefrom to this court, for re-

view, the record in the case there lately pending, entitled *Chicago, Burlington & Quincy Railway Company, Plaintiff in Error, vs. The United States of America, Defendant in Error,* being No. 2484 on the docket of that court —the petitioner being said plaintiff in error. A duly certified copy of the entire record in said cause is herewith presented.

Your petitioner further represents that questions of gravity and great public importance are involved in said cause, as will hereinafter appear.

Some of the most important questions involved in this case are also involved in a certain cause now pending in this court, removed hereto on *certiorari* from said Circuit Court of Appeals; and said cause, so removed by reason of the importance of the questions involved therein, has been by this court advanced and set down for hearing on January 20th, 1908. The cause referred to is entitled *"Armour Packing Company vs. The United States of America."* The indictment and conviction in that case, and the indictment and conviction in this case, arose out of the identical export shipments (from Kansas City, Kansas, *via* railway and ocean steamships to foreign ports)—the shipper in that case being indicted and convicted for *accepting* concessions in connection with those shipments, and the carrier in this case (your petitioner) being indicted and convicted for *granting* concessions in connection with said shipments. The indictments, trials and convictions in both of said cases were in the same court, at the same term; both cases were submitted at the same term of the Court of Ap-

peals; but the judgments of affirmance were at different terms of the Circuit Court of Appeals—the opinion in this case being only handed down on November 8th, 1907.

As further indicating the similarity of some of the most important questions involved in the two cases, we quote the following paragraph from the opinion of the Circuit Court of Appeals in this case:

"The Chicago, Burlington & Quincy Railway Company was indicted, convicted and fined for violations of the amendment to the Interstate Commerce Law, commonly known as the Elkins Act (32 Stat., 847), in giving to certain packing companies concessions from established rates of transportation between Kansas City, Kansas, and New York City and Hoboken, New Jersey, on packing house products destined for export. In *Armour Packing Co. vs. United States*, C. C. A., 153 Fed., 1, we affirmed judgments against the packing companies for receiving the concessions which the Burlington Company is charged with giving. Most of the contentions of the Burlington Company in the case at bar may be disposed of by reference to the opinion in the Armour case. We there held (1) that the act of Congress applied to transportation within the United States of property in foreign commerce though being carried under a through bill of lading from the point of origin within the United States through the port of transshipment to the foreign destination. (2) Though property is destined for export to a non-adjacent foreign country the rate or rates of transportation from the point of origin within the United States to the port of transshipment, if separable from the through rate, are within the act of Congress and must be published and filed with the Commission, and that a concession in respect thereof is a violation of the law. That this is so although the rate specified in the bill

of lading is one through rate to the foreign destination made up by the initial carrier by combining the rate or rates from the place of origin to the port of transshipment with the cost of ocean carriage. (3) That as so construed the act of Congress is not in contravention of paragraphs 5 and 6 of section 9 of article I of the National Constitution, providing that 'no tax or duty shall be laid on articles exported from any state' and that 'no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.' (4) That the giving or receiving of a concession in violation of the Elkins act whereby transportation is thereafter obtained is a continuing offense and a prosecution therefor may be maintained in any jurisdiction through which the transportation is conducted. Therefore, though the shipments in question originated in Kansas the prosecution was maintainable in the western district of Missouri, through which the property was transported at the unlawful rate. (5) That it is nevertheless an offense though the concession was from a component part of a single through rate. (6) That a contract between a carrier and a shipper that a rate then lawful should be maintained for a fixed period must yield to a subsequent increase of the rate by the carrier and the publication and filing thereof with the Commission in accordance with the act of Congress—otherwise the equality sought by the law would be frustrated and advantage would rest with those who were secretly favored or were diligent to make private contracts with carriers. (7) That no device in the sense of a pretext or artifice such as false billing, classification, weighing or the like is essential to the giving or receiving of a concession contrary to the Elkins act. The phrase 'by any device whatever' found in section 1 of the act means 'directly or indirectly, in any way whatever.' (8) That an intent to commit an offense of this character is shown by a conscious, intentional doing of that which the law prohibits."

Immediately following the foregoing paragraph of said opinion of said Circuit Court of Appeals, that court says: "There remain to be considered some questions which were not involved in the Armour case;" and those remaining questions are then taken up and disposed of adversely to petitioner.

THE CASE SOUGHT TO BE REVIEWED.

As will appear by the record of this case, herewith presented, your petitioner was indicted, tried, convicted and fined $15,000 in the United States District Court for the Western Division of the Western District of Missouri, for an alleged violation of the amendment to the Interstate Commerce Law, commonly known as the Elkins Act; 32 Statutes at Large, 847; 10 Fed. Stat. Ann., 170; United States Compiled Stat. Supp., 905, 599; by offering, granting and giving to the Armour Packing Company a concession of 12 cents on the one hundred pounds of the freight rate on an export shipment of certain packing house products by railway and ocean steamships, from Kansas City, Kansas, to a foreign port—the alleged concession being for that part of the route east of the Mississippi river, and between that point and New York City. Altogether, there were seven counts in the indictment, covering similar export shipments of packing house products, by Armour Packing Co. and other packing companies, from Kansas City, Kansas, to European points. Three of said counts were *nolled* by the district attorney, and convictions were had on the remaining four. The case was duly removed to

the Circuit Court of Appeals, where, in an opinion by Judge Hook, handed down November 8th, 1907, the judgment of the trial court was affirmed. The said opinion appears in the printed record herewith presented, at page 228. The indictment appears in said record at page 5.

GENERAL FACTS IN THE CASE.

Your petitioner was and is a railway corporation, engaged in the transportation of property in interstate commerce and for export, with other connecting railway carriers and foreign steamship lines, to European points The packing companies named in the several counts of the indictment, hereinafter called shippers, had established a foreign trade to European points, conducted by through export bills of lading, by the terms of which packing house products were consigned through to foreign consignees, at a single through export rate, which included every charge for the through transportation from Kansas City, Kansas, to the foreign point.

The route by which this traffic was carried was over the line of the Burlington Company from Kansas City, Kansas, to St. Louis, Missouri; thence over the Toledo, St. Louis & Western Railroad, the New York, St. Louis & Chicago Railroad, the Lehigh Valley Railroad, and the Grand Trunk Western Railroad, in some instances to New York City and in others to Hoboken, N. J., where the consigned products were delivered by the last railway carrier to one or other of different steam-

ship lines, with whom previous arrangements for space had been entered into, for shipment to the foreign port.

There was no fixed contract, agreement or traffic arrangement with steamship lines, for the reason that ocean rates constantly vary from day to day, and, at times, from hour to hour, by reason of the constantly shifting conditions of the demand for a supply of space in steamships at different ports. On or about June 16th, 1905, the packing companies referred to, each for itself, made contracts, with different steamship companies, for space for packing house products upon steamers to sail at or about specified dates. These contracts specified the rate agreed upon with the steamship companies, and when made were turned over to the Burlington Company, and used by it in quoting and making up the through export rate from Kansas City, Kansas, to the foreign ports, for the particular shipments in question.

Prior to the 17th of June, 1905, the Burlington Company had been handling this export traffic *via* other lines, composing an entirely different route from that involved in this case. On or about the date last aforesaid the different railway companies hereinabove named solicited the Burlington Company, at Kansas City, for a share of said export traffic. Together they considered the matter, and finally reached an agreement by and between themselves on the one hand and the packing companies on the other hand, whereby, in consideration that the railroad companies would maintain a certain rate for the inland portion of the route until

December 31st, 1905, the packing companies agreed to give the Burlington Company and the other railway companies the transportations in question, during that period. As between the railway companies it was agreed that the connecting lines from the Mississippi river east to the Atlantic seaboard should have and receive as and for their portion of the service in carrying the products 23 cents per hundred pounds. That was to be their proportional share of the through rate. At that time the lines east of the Mississippi river had published and had in effect a rate of 23 cents per hundred pounds for packing house products of the character in question, originating at St. Louis and points common thereto, for shipment to common Atlantic seaboard points; and the contract made by said lines with said packing companies and with the Burlington Company was to the effect that said lines east of the Mississippi river would accept and continue until December 31st, 1905, to accept the same amount, *i. e.*, 23 cents per hundred pounds, as their proportion of the through rate on these export shipments, as they were then charging for local shipments between common St. Louis points and New York City and other Atlantic seaboard points. This contract having been entered into, the Burlington Company entered into a contract with the respective packing companies, on June 17th, 1905, whereby it was agreed the Burlington Company would, until December 31st, 1905, carry for said packing companies their packing house products at a through export rate, varying of necessity from time to time with the varying

charges of the ocean carriers, but out of which there was to be paid the sum of 23 cents per hundred pounds to the lines east of St. Louis as their proportional share of said through rate.

On August 17th, 1905, Armour Packing Company delivered to the Burlington Company, at Kansas City, Kansas, 67 tierces of oleo oil, for transportation to Christiania, Norway, the course of the carriage to be over the line of said Burlington Company to St. Louis, thence eastward over the other railway lines above named to New York City, thence by steamship of the Wilson Line to Christiania, in the kingdom of Norway. Upon receipt of said products, the Burlington Company issued to the packing company a contract, in writing, whereby it agreed to deliver to the order of said packing company, at Christiania, Norway, all of said oleo oil, at a single through rate therein specified, which included the charge of the steamship line, and thereupon the transportation of said oil was undertaken by the Burlington Company. Subsequently, in August and September, the other packing companies consigned packing house products, in similar manner, upon similar contracts, and, as to them, the same course of transportation was carried out. In each instance the respective packing companies paid to the Burlington Company, the initial carrier, at Kansas City, Kansas, the through rate contracted for. In the instance of the Armour Packing Company, it paid to the Burlington Company the sum of $155.53, of which the Burlington Company retained $29.39 as its share of the through rate for trans-

porting the property from Kansas City, Kansas, to East St. Louis, Ill., and turned over to the Toledo, St. Louis & Western Railway Company, the next carrier, the balance of $126.14, to prepay shipment to destination. The transportation of packing house products from Kansas City, Kansas, to European points continued at the rates and under the agreements aforesaid until the end of the contract period, December 31st, 1905.

In the meantime, however, the Toledo, St. Louis & Western Railway Company attempted to withdraw the 23-cent rate, effective as above stated, for shipments from St. Louis to New York and common points, and filed and published with the Interstate Commerce Commission a rate of 35 cents per one hundred pounds for the character of products in question, the higher rate becoming effective August 7th, 1905. Each of the four shipments mentioned in the respective counts of the indictment took place between August 7th, 1905, and December 31st, 1905. In each instance the Toledo, St. Louis & Western Railway Company, after August 7th, instead of retaining the 23 cents per hundred pounds, as its proportional part of the agreed through rate, retained 35 cents per hundred pounds, and forwarded the balance, upon that basis, to the next lines east of it, which lines were compelled to pre-pay to the ocean steamship company the charge for the ocean carriage, so that a shortage in each instance arose. Nevertheless, the transportation was continued to be handled by the Burlington Company on the original contracts with the packing companies. The Burlington Company took

the position that through export traffic of this character could lawfully be conducted without publication with the Interstate Commerce Commission of the through rate, and that it was not unlawful for any carrier to have a higher rate for domestic traffic than it charged for export traffic, although moving from the same inland point; therefore, that the 35-cent rate, published by the Toledo, St. Louis & Western Railway Company, might lawfully be maintained and, at the same time, the company might lawfully continue to transport the packing house products for export at the original agreed division of 23 cents. The Burlington Company also took the position that the contract between it and its eastern connecting lines was valid and inviolable by either party thereto until December 31st, 1905; and that, until that date, no one party to the contract had power, by its own separate act, to violate its contract, and thus put an end to the contractual obligations. By agreeing to the 23-cent rate, the connecting carriers bound themselves not only to the Burlington Company and to the four packing companies, but to the entire public engaged in shipping like merchandise, until the expiration of the contract period. The Burlington Company, so far as its patrons were concerned, gave everyone the same rate during the contract period, and no one was discriminated against; and that company took the position that any patron of the connecting carriers who might be required to pay more than the contract rate for export traffic had an adequate remedy, under the Interstate Commerce Law, to protect himself. The Burlington Company took the

position that it was legally and morally bound to the packing companies named to maintain its contract with them, and it continued to take the packing house products for export, at the through contract rate, made upon the basis of 23 cents for that portion of the railway rate east of St. Louis.

By reason of these contracts and the disagreements of the railway carriers above mentioned arose the charge in the indictment that the Burlington Company, at Kansas City, Kansas, did unlawfully offer, grant and give to the packing companies named a concession of 12 cents of said freight rate for that part of the route east of the Mississippi river.

PROCEEDINGS IN THE TRIAL COURT.

(*a*) *The Indictment.*

The indictment was for an alleged violation of the amendment to the Interstate Commerce Law, commonly known as the Elkins Act, by offering, giving and granting to certain shippers certain alleged concessions; the substance of the charge in the second count of the indictment being:

On August 17th, 1905, Armour Packing Company delivered to the Burlington Company, at Kansas City, Kansas, 67 tierces of oleo oil, for transportation by it and its connecting railroads, through and beyond the Western Division of the Western District of Missouri, to New York City, for export; said Burlington Company immediately transported the same from Kansas

City, Kansas, through and beyond the Western Division of the Western District of Missouri, in connection with its connecting railroads, to New York City, for export; theretofore there had been filed by said Burlington Company and its connecting railroads, with the Interstate Commerce Commission, certain tariffs and rates, joint schedule, tariffs and rates, in force at the time upon their said routes; said tariffs and rates, and joint tariffs and rates for that part of said route from the Mississippi river, that is to say, from East St. Louis, Ill., to New York City, New York, and to Hoboken, N. J., were made, published and filed by said connecting railroads; and the Burlington Company, for shipments from Kansas City, Kansas, to New York City and Hoboken, over said connecting railroads, was a party to and bound by the rates, schedules and joint tariffs and schedules made, published and filed by said connecting railroads; said rates and schedules showed the local rates established for the transportation of said property over said connecting lines of railroad, for that part of the route lying east of the Mississippi river to New York City and to Hoboken, was 35 cents for every one hundred pounds of such property so transported; but said Burlington Company, *at Kansas City, Kansas,* unlawfully and feloniously did offer, grant and give to said Armour Packing Company a concession of 12 cents of the said freight rate, for that part of said route east of the Mississippi river, upon every one hundred pounds of the property so transported, whereby such property was transported from Kansas City, Kansas, to New York

United States, also of article VI of the amendments to said Constitution, commonly known as the Sixth amendment; (7) defendant had a right to make a through rate from Kansas City, Kansas, over its own line and the lines of connecting railroads, and over steamship lines to European points, less than the total sum of the local rates on the respective railway lines, plus steamship rates, and the local rates from East St. Louis had nothing to do with such export shipments; (8) the local rates on the connecting railway lines from East St. Louis to New York City and Hoboken are not the legal rates on through export traffic from Kansas City, Kansas, to European points; (9) there was no evidence that the Burlington Company was a party to the joint tariffs and rates from East St. Louis to New York City and Hoboken, undertaken to be established by the Toledo Railway Company, on August 7th, 1905.

All of said requested instructions were by the court refused and exceptions were duly saved.

(*f*) *The Court's Charge.*

The court charged the jury, in substance (Rec., p. 177, *et seq.*), (1) that the contract for transportation made between the defendant and the shipper was valid when made, but that it was invalidated by the subsequent change of the local rates by the connecting lines east of the Mississippi river; (2) that a common carrier cannot contract for future shipments, before the expiration of which the rates may be changed; (3) that the shipments made under the contract in this case sub-

sequent to the change in the local rates by the lines east of the Mississippi river at the contract price constituted a concession, and was a violation of the law.

Defendant duly objected and excepted to each and every of said charges.

(g) *The Verdict and Judgment.*

The jury returned a verdict finding defendant guilty on all four counts of the indictment; motion for new trial was filed and overruled, and exception was duly saved. Motion in arrest of judgment was overruled, and exception was duly saved. The motion in arrest of judgment (Rec., p. 187) was based on the following grounds, briefly stated:

1. The indictment failed to charge the commission of any offense against the United States.

2. The indictment was insufficient, indefinite and uncertain.

3. The indictment was bad for duplicity.

4. The Act of Congress of February 19th, 1903, commonly known as the Elkins Act, insofar as it purports to authorize prosecutions in any district through which the transportation may have been conducted, is in violation of article 3, section 2 of the Constitution of the United States, and in violation of the Sixth amendment to said Constitution.

5. The Interstate Commerce Act and amendments thereto, insofar as they undertake to confer jurisdiction upon the Interstate Commerce Commission on

through export shipments from inland points, by through bills of lading, and for a through rate to points in Europe, is in violation of paragraph 5 of section 9 of article I of the Constitution of the United States, relating to taxation on exports and commercial regulations.

6. The whole record shows the defendant not guilty, and the verdict should have been in its favor.

After overruling said motions for new trial and in arrest of judgment, the court rendered final judgment, imposing a fine of $15,000 upon the defendant (Rec., p. 25).

(*h*) *Proceedings in Error.*

Proceedings in error were duly instituted (Rec., p. 189); assignments of error (Rec., p. 190); in which were presented all the questions hereinabove mentioned or suggested and discussed in the arguments and briefs in the Circuit Court of Appeals; resulting in an affirmance of the judgment and sentence of the District Court by the Circuit Court of Appeals (Rec., p. 234.).

LEGAL QUESTIONS INVOLVED.

The record in this case presents and the case involves, amongst others, the following legal questions of great public importance:

First: Are through export shipments, by railway and ocean steamships, to European points, within the provisions of the Interstate Commerce Act and the amendments thereto?

Second: If such export shipments are within the provisions of that law, are not such provisions, insofar as they affect such transportation, void because violative of and in conflict with article 1, section 9, paragraph 5 of the Constitution of the United States?

Third: Is the provision in the amendment to the Interstate Commerce Law, authorizing the prosecution of offenses thereunder, in any district through which the transportation may be had or conducted, violative of article 3, section 2 of the Constitution and the Sixth amendment thereto, providing that in all criminal prosecutions the accused shall be tried in the state and district wherein the offense was committed? Applied to this particular case, the question is: Since the indictment alleges that *the concession was granted in Kansas City, Wyandotte County, Kansas,* does the further allegation that the products were transported through the Western Division of the Western District of Missouri, give jurisdiction to the District Court in that district?

Fourth: May several connecting railway carriers make a valid contract, whereby they agree, for a definite term, to transport certain products, at a through rate (that being the then existing schedule rate), each carrier to have a certain portion of such through rate? If so, may such contract be invalidated by the act of one of the contracting carriers in changing the local rates over its own line? As applied to this case, the question is: The Burlington Company and its eastern connections agreed between themselves, June 17th, 1905, that until December 31st, 1905, they would handle and

transport packing house products of the kind in question, for export, at a fixed rate (the then established schedule rate;)—having so agreed, could one of the contracting carriers, without the knowledge or consent, and against the will of the Burlington Company, invalidate and make unlawful that fixed rate, by filing with the Interstate Commerce Commission a different local rate over its own line, or over part only of the entire or through route—in this case, east of the Mississippi river?

Fifth: May the initial carrier enter into a valid contract with the shipper for through transportation over its line and the lines of connecting roads and ocean steamships, to European points, at a through rate less than the total sum of the local rates on the various lines, plus steamship rates? Applied to this case, the question is: May the Burlington Company contract with the Armour Packing Company to transport its products from Kansas City, Kansas, to Christiania, Norway, on a through bill of lading, at a fixed through rate which may be less than the sum of the local rates over its own line and the local rates over the lines of its connecting railway carriers, plus the ocean steamship rate?

Sixth: In the absence of a published schedule of through rates on export traffic to European points, is the sum of the established local railway rates, plus the ocean steamship rates, the only legal rate?

Seventh: May a shipper, in good faith, in contemplation of a movement of its products to European markets, make a valid contract for the transportation

of such products, for a reasonable length of time, over connecting railways in this country and ocean steamship lines, at a through rate for the whole transportation? If so, may such valid contract, within such reasonable time, be invalidated by the act of one of the connecting railway carriers, in filing with the Interstate Commerce Commission a new and different local rate over its own line, or over a part only of the through contract route, without the knowledge or consent of the shipper or of the other connecting carriers, parties to the contract?

ERRORS OF THE COURT OF APPEALS.

Your petitioner believes, and respectfully represents to this Honorable Court, that the judgment of the Circuit Court of Appeals affirming the judgment and sentence of the District Court is erroneous; and that the holdings of said Circuit Court of Appeals on the questions hereinbefore presented, as shown by the opinion of said Court of Appeals, herein referred to, are also erroneous; and that this Honorable Court ought to require said case to be certified to it for its review and determination, in conformity with the provisions of the Act of Congress in such cases made and provided.

Said Circuit Court of Appeals, in its said opinion, held—as your petitioner believes, erroneously—as follows: (1) that the Interstate Commerce Act applies to transportation of property in foreign commerce, though carried under a through bill of lading

from the point of origin within the United States, through the port of transshipment to a foreign destination, in a non-adjacent foreign country; (2) that the rate or rates of transportation on property destined for export to a non-adjacent foreign country are within the act of Congress and must be published and filed with the Interstate Commerce Commission, and that a concession in respect thereof is in violation of the law; and that this is so although the rate specified in the bill of lading is one through rate to the foreign destination, made up by the initial carrier by combining the rate or rates from the place of origin to the port of transshipment, with the cost of ocean carriage; (3) that, as so construed, the Interstate Commerce Act is not in contravention of paragraphs 5 and 6 of section 9 of article I of the Constitution of the United States. (4) That a prosecution for granting a concession in one jurisdiction or state, in violation of the Elkins Act, may be had and maintained in any district through which the transportation is conducted; and that, though the shipments in question originated in Kansas, and the concession charged was granted in that state, the prosecution therefor is maintainable in the Western District of Missouri, through which the transportation was had. (5) That a concession for a component part of a single through rate is an offense. (6) That a valid contract entered into between a carrier and a shipper for transportation at a through rate, over several connecting lines, which rate was then the lawful rate, might be invalidated by the act of any one of the con-

necting carriers, acting alone, without the knowledge or consent of the other contracting parties, by the publication of a new or different local rate over its line with the Interstate Commerce Commission.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, demanding said court to certify and send to this court a full and complete transcript of the record of proceedings of that court in said case, entitled *The Chicago, Burlington & Quincy Railway Company, Plaintiff in Error, vs. The United States of America, Defendant in Error, No.* 2484, to the end that said case may be reviewed and determined by this Honorable Court, as provided in and by section 6 of the Act of Congress entitled "An Act to Establish Circuit Courts of Appeals, and to define and regulate in certain cases the Jurisdiction of the courts of the United States, and for other purposes," approved March 3rd, 1891; and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem appropriate and in conformity with said act; and that said judgment of affirmance of said Circuit Court of Appeals, in said case, and every part thereof, may be by this Honorable Court reversed.

For the purposes of this application, your petitioner hereby adopts and herewith submits to the Court the brief heretofore submitted by Armour Packing Com-

pany, in support of its petition for writ of *certiorari* in the case hereinabove mentioned and referred to, which has been removed to this court and been set down for hearing on January 20th, 1908, with which brief this court is familiar. In case the prayer of your petitioner shall be granted, and its case removed to this court for review, your petitioner will prepare and file for the hearing thereof a separate brief, covering all points common to both of said cases and such other points as are peculiar to this case.

O. M. SPENCER,
O. H. DEAN,
W. D. MCLEOD,
H. C. TIMMONDS,
Counsel for Petitioner.

AFFIDAVIT.

State of Missouri,
County of Jackson, } ss:

H. C. Timmonds, being duly sworn, upon his oath doth say: That he is one of the counsel for The Chicago, Burlington & Quincy Railway Company, the petitioner; that he prepared the foregoing petition; and that the allegations therein contained are true, as he verily believes.

H. C. TIMMONDS

Subscribed and sworn to by said H. C. Timmonds this 26th day of December, 1907.

My commission will expire on the 24th day of October, 1910.

OLIVER C. MOSMAN,
(Seal) *Notary Public within and for*
Jackson County, Missouri.

We hereby acknowledge receipt of a copy of the foregoing petition and of timely notice that said petition will be presented at the opening of court on Monday, the 6th day of January, 1908, to the Supreme Court of the United States, in its court room, at the Capitol in the city of Washington, D. C.; and we hereby consent and agree that said petition may be submitted on briefs referred to in the last paragraph thereof.

A. S. VANVALKENBURGH,
United States District Attorney
for the Western District of Missouri,
LESLIE J. LYONS,
Assistant United States District Attorney,
Attorneys for Respondent.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, petitioner,
v.
THE UNITED STATES.
No. 552.

The Government does not deem it proper to oppose the granting of the petition for a writ of certiorari in this case, for the reason that this court has hitherto, at the present term, granted a writ of certiorari in the case of the *Armour Packing Company* v. *The United States*, No. 467, and three other cases, Nos. 468, 469, and 470, respectively, in each of which cases the facts presented by the records and the questions of law involved are substantially identical with this case. The only difference being that in the case of the Chicago, Burlington & Quincy Railway Company *the carrier* was prosecuted and convicted *for granting the concession*, whereas in each of the other cases above mentioned, *the shipper* was prosecuted and convicted *for receiving concessions*.

We have the honor to state, however, for the information of this court that in the event a writ of certiorari is allowed in this case, counsel for the Chicago, Burlington & Quincy Railway Company have ad-

vised the Attorney-General by telegram that the decision in this case may abide the decision and judgment of this court in the case of the *Armour Packing Company* v. *The United States* and the other packing cases above referred to. To such stipulation counsel for the Government agree and it will therefore be unnecessary to have this case set down for argument in the event that the petition for the writ of certiorari is allowed, unless this court should intimate that it desires to hear arguments with respect to this case.

HENRY M. HOYT,
Solicitor-General.
MILTON D. PURDY,
Assistant to the Attorney-General.

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CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, PETITIONER, *v.* UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 552. Submitted January 22, 1908.—Decided March 16, 1908.

Decided on the authority of *Armour Packing Company* v. *United States*, *ante*, p. 56.

THE facts are stated in the opinion.

Mr. Frank Hagerman, *Mr. J. C. Cowin*, *Mr. A. R. Urion*, *Mr. Henry Veeder* and *Mr. M. W. Borders* for petitioners.

The Attorney General, *Mr. Milton D. Purdy*, Assistant to the Attorney General, and *Mr. A. S. Van Valkenburgh*, United States Attorney, for the United States.

MR. JUSTICE DAY delivered the opinion of the court.

The counsel for the petitioner and the Solicitor General for the United States having filed a stipulation in writing in this cause, agreeing to abide the result of the Packing Company cases just decided (Nos. 467, 468, 469 and 470), it is hereby ordered that the judgment of the Circuit Court of Appeals in this case be

Affirmed.

MR. JUSTICE MOODY took no part in the disposition of this case.

MR. JUSTICE BREWER'S dissent in *Armour Packing Co.* v. *United States*, *ante*, p. 56, applied also to this case.